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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1965~~ 153

ANN CORRINE SHARP,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

MAURICE R. WOULFE,
501 Security Homestead Bldg.,
219 Carondelet Street,
New Orleans, Louisiana,
Attorney for Petitioner.

HAUSER-AMERICAN, "LEGAL PRINTERS", 441 GRAVIER STREET, NEW ORLEANS, LA.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Louisiana, entered in the above entitled case on Monday, January 17th, 1966.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Louisiana is reported at 182 So. (2d) 517 No. 3 advance sheets of March 10th, 1966. (See appendix "A").

JURISDICTION

The judgment of the Supreme Court of Louisiana, the highest Court of said State in which a decision could be had,

was entered on January 17th, 1966. A timely Petition for Re-Hearing was filed and same was denied on February 23rd, 1966. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257 (3).

QUESTIONS PRESENTED

1) Can a trial of a person be deemed according to law, which permits the District Attorney, in an opening statement, over petitioner's objection, to inform the jury of the bad character of petitioner, and to offer witnesses concerning same, although petitioner had not, and did not place her character at issue on the trial thereon, and whether the rulings of the trial Court, and the judgment of the Supreme Court of Louisiana, upholding such procedure, was a denial of petitioner's rights guaranteed her under the 14th Amendment of the Constitution of the United States to a fair and impartial trial?

2) Whether the Courts of Louisiana by their construction of said State Abortion Act, reading into said act a 'special intent', and knowledge when said act omits to make special intent and knowledge part of said Act, is a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States, because by such construction and interpretation said Court has assumed legislative functions, possessed solely by the Legislature of Louisiana?

STATUTES INVOLVED

The Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States. Constitution of Louisiana Article 1, Sections 1 and 11. Louisiana Revised Statute 14:87 also as amended by Act 167 of 1964, and Revised Statute 15:446 and Revised Statute 14:11.

STATEMENT OF THE CASE

Petitioner was charged by information, before the Criminal District Court for the Parish of Orleans, State of Louisiana, of the offense of 'Abortion' as defined by Louisiana Revised Statute 14:87 on the 23rd day of February 1963. She was tried and convicted of said charge on October 18th, 1963, and sentenced on November 12th, 1963, to serve three (3) years at hard labor in the Louisiana State Penitentiary.

Seven Bills of Exception were reserved to the Court's rulings in permitting the District Attorney in his opening statement and during the trial to refer to and offer evidence of other acts of abortion alleged to have been committed by defendant upon other females, not charged in said information, under the theory and guise that said Revised Statute 14:87 contained a 'special intent', and under Revised Statute 15:446 were properly admissible, even though petitioner did not testify or place her character at issue on said trial.

Appeal was duly taken to the Supreme Court of Louisiana upon the issues herein raised and the judgment of the trial Court was affirmed by the Supreme Court of Louisiana, although its attention was called to the action of the Louisiana State Legislature of 1964, passage of Act 167 of 1964, amending Revised Statute 14:87 by adding the word **"intent"** to said R.S. 14:87 exactly over a year after the alleged commission of the act of abortion charged in the Information upon which petitioner was charged, tried and convicted.

The judgment of conviction was entered by the Supreme Court of Louisiana on the 17th day of January, 1966. A petition for Re-Hearing was duly applied for

setting forth in detail again the Constitutional questions herein raised but was denied by said Court on February 23rd, 1966.

REASONS FOR GRANTING THE WRIT

1) The decision of the Supreme Court of Louisiana is clearly erroneous and unconstitutional on the following grounds:

By assuming the functions of the Legislature by reading into said Revised Statute the word "**intent**", so that under Revised Statute 15:446 the rulings complained of herein, became valid although said Court fully recognized its limitations in the interpretation of Criminal Statutes: *State vs. Daniels*, 236 La. (2d) at 1022, 1023, 1024 to 1026, 109 So. (2d) 896.

2) In admitting the alleged bad character of petitioner in the District Attorney's opening statement, and the evidence of other alleged acts of abortion by petitioner upon other females not charged in said Bill of Information constituted such a denial of fair procedure that said judgment was a violation of due process under the 14th Amendment of the Constitution of the United States.

In *Deutch vs. U. S.*, 367 U.S. 456, 81 S. Ct. 1587, "Prosecution has burden of establishing guilt solely on basis of evidence produced in court and under circumstances assuring an accused all the safeguards of a fair procedure, including presumption of his innocence.". Also *State vs. Little*, 87 Ariz. 295, 350 Pac. (2nd) 756; *People vs. Follette*, 149 N.Y. Supp. 888; *State vs. Gardner*, 198 La. 861, 5 So. (2d) 132.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ MAURICE R. WOULFE

MAURICE R. WOULFE,
Counsel for Petitioner.

ANN CORRINE SHARP

PROOF OF SERVICE

I, MAURICE R. WOULFE, attorney for petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Petition for Writ of Certiorari on Hon. Jim Garrison, District Attorney, for the Parish of Orleans, State of Louisiana, Counsel for Respondent, by mailing a copy thereof, first class, postage prepaid, addressed to his office at 2700 Tulane Avenue, New Orleans, Louisiana.

Dated this _____ day of _____, 1966.

MAURICE R. WOULFE,
Counsel for Petitioner,
501 Security Homestead Bldg.,
219 Carondelet Street,
New Orleans, Louisiana.

APPENDIX "A"

Monday Jan 17 1966

SUPREME COURT OF LOUISIANA

No. 47,908

STATE OF LOUISIANA

v.

ANN CORRINE SHARP

Appeal from the Criminal District Court for the Parish of Orleans, Section "C", State of Louisiana; Honorable Edward A. Haggerty, Jr., Judge

HAMITER, Justice.

Ann Corrine Sharp was charged under LRS 14:87 with performing on February 23, 1963 an abortion upon a pregnant female, by the use of an instrument and packing, for the purpose of procuring premature delivery of an embryo. Tried and convicted, she was sentenced to serve three years at hard labor in the state penitentiary. This appeal followed.

The brief of defense counsel filed in this court asserts, and the record reflects, that during the trial a number of "bills of exceptions were reserved to the ruling of the trial Court in allowing the District Attorney to refer to other alleged acts of abortions committed by defendant upon other females not connected with the charge in the information upon which defendant was being tried. And in permitting these females to testify to these alleged abortions

performed by defendant upon them." A bill was also taken to the overruling of defendant's motion for a new trial, the motion being based on the same specified error referred to in each of the other bills.

In other words defense counsel contends here, as he did in the trial court, that "R.S. 14:87 defining the offense of abortion, did not contain any specific intent" and, therefore, the introduction of evidence showing other alleged acts of abortion constituted prejudicial error.

There is no merit in this contention. LSA 14:87, as it read when the charged offense was committed, defined abortion as the performance of certain acts **"for the purpose** of procuring premature delivery of the embryo or fetus; * * *." In *State v. Pailet*, 246 La. 483, 165 So. 2d 294, the defendant was charged with the crime of abortion, the statute there being the same as that under which this accused was convicted. The trial court permitted the state to show other acts of abortion committed by such defendant. On an appeal from her conviction she made the identical contention as is presented here. Answering, we said: "* * * since the crime is only committed when there is a purpose to procure premature delivery, intent is an essential ingredient of the offense. This being so, the evidence of other abortions performed by appellant was clearly admissible under the specific provisions of R.S. 15:445, 446. * * *"

Defendant attempts to distinguish the *Pailet* case by arguing that the court there held the evidence admissible solely because of the defense urged in the opening statement of defense counsel. We do not so interpret the *Pailet* opinion. What we said was that because a specific intent was necessary in the commission of abortion the evidence offered in that case was admissible to prove such intent,

particularly so inasmuch as the accused's attorney had indicated in his opening statement that the defense would show lack of the required criminal intent. Our having noted the last mentioned reason for allowing the introduction of the evidence to show intent did not detract from the basic holding that a specific intent was a necessary ingredient of the offense of abortion.

LRS 14:87 has since been amended by Act 167 of 1964 so that it now provides that the crime of abortion is committed by the performing of certain acts (the same as those enumerated in the original provisions), "with the intent of procuring premature delivery * * * ." Such an amendment in no way affects our holding in the *Pailet* case. Rather, it strengthens our conclusion there that the Legislature meant originally to require a specific intent. The substitution of the word "intent" for "purpose" in no way changed the abortion statute. The two words are virtually synonymous. Thus, in the 1961 Edition of Webster's Third New International Dictionary each word is given as a synonym for the other.

For the reasons assigned the conviction and sentence are affirmed.

Hamlin, J., recused.

APPENDIX "B"

United States Constitution, Fourth, Fifth and Fourteenth Amendment.

Constitution of State of Louisiana.

Article 1, Section 9:

> "In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury"; (West L.S.A. Constitution Vol 1 page 111)

Article 1, Section 11:

> "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution." * * * (L.S.A. Constitution West Vol 1 page 161)

Article 7, Section 10; Appellate jurisdiction; Criminal

> "The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed." (West's L.S.A. Constitution Vol 2 page 50)

APPENDIX "C"

Louisiana Revised Statutes

Title 15:446:

> "When knowledge or intent forms an essential part of the injuiry, testimony may be offered of such acts, conduct or declaration of the accused as tends to establish such knowledge or intent and where the offense is one of system, evidence is admissible to prove the continuity of the offense, and the commission of similar offenses for the purpose of showing guilt, knowledge and intent, but not to prove the offense charged."

Louisiana Revised Statutes

Title 14:87

> "Abortion is the performance of any of the following acts, for the purpose of procuring premature delivery of the embryo or fetus, etc."

Act 167 of 1964 amending 14:87

> "Abortion is the performance of any of the following acts, with the intent of procuring premature delivery of the embryo or fetus." etc.